IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JEFFERY BRIAN MCDONOUGH, Appellant, v. STATE OF WASHINGTON ATTORNEY GENERAL'S OFFICE; OFFICE OF SUPPORT ENFORCEMENT WASHINGTON; OFFICE OF SUPPORT ENFORCEMENT COLORADO; and JENNIFER MCDONOUGH-LUNDEBY, Respondents.	)	No. 61969-1-I DIVISION ONE UNPUBLISHED OPINION FILED: August 17, 2009

AGID, J.—Jeffery McDonough (McDonough) appeals from a superior court order affirming an administrative ruling setting the amount of child support he is obligated to pay. Because McDonough has either failed to preserve or adequately support his arguments, we affirm.

McDonough and Jennifer McDonough-Lundeby (Lundeby) dissolved their marriage on June 30, 1995, in Pierce County, Washington. McDonough and Lundeby have three children. McDonough was not employed at the time of the dissolution, and the trial court ordered him to pay $75 per month in child support, the statutory

minimum. However, the order also provided:

> Child support shall be increased when Jeffery McDonough returns to work by the Division of Child Support. The obligation shall be established administratively effective the date Jeffery McDonough returns to work. Jeffery McDonough shall advise the Division of Child Support of his return to work within one week.

There is no indication that either party appealed from this decree.

Lundeby moved to California and then to Colorado, remarried, and had another child. She received public assistance in Colorado, and her three children with McDonough were at one point the subject of dependency proceedings. The two youngest children were returned to Lundeby's care, but the oldest child, Jessika, remained in foster care for a period of time. Jessika was born April 1, 1988, and left Lundeby's home in September 2005, at the age of 17.

McDonough moved to Florida and worked for a short time. He then returned to Washington and worked sporadically until 2001 when he started working more steadily. McDonough remarried on December 31, 2004, and had another child in this relationship. McDonough's wife has three other children for whom she receives no support.

In July 2006, the Washington Department of Social and Health Services (DSHS) received a request from Colorado to establish and enforce McDonough's child support obligations on behalf of Colorado and Lundeby. Colorado's interest stemmed from its public assistance to Lundeby and her request for assistance in collecting support. DSHS established a support amount and served McDonough with a Notice and Finding

of Financial Responsibility on December 11, 2006. DSHS determined that McDonough had a monthly support obligation of $470 beginning December 2006, and that he owed back child support of $51,952.90 for the period April 1997 through November 2006. McDonough disputed this determination and requested an administrative hearing.

Administrative Law Judge (ALJ) Christine Currie conducted a hearing on February 26, 2007. A DSHS claims officer testified about how DSHS calculated the support it alleged McDonough owed. McDonough testified about his employment and income since 1997. He testified that he notified DSHS that he was working, but it took no action to calculate his support obligation. He also testified about his current family circumstances. Lundeby testified about her employment history and testified that she has been diagnosed with multiple sclerosis and has not worked since 1999. Lundeby testified that Jessika has not lived in her home since September 2005 and was emancipated in April 2006 at the age of 18. Lundeby testified that she agreed in 2002 or 2003 to have Washington stop collecting child support from McDonough after McDonough promised to pay her child support directly. When McDonough failed to honor his promise, Lundeby again sought assistance in collecting child support.

ALJ Currie issued findings of fact, conclusions of law, and a final order on April 20, 2007. The ALJ prepared separate worksheets for each year child support was assessed and determined that McDonough owed back support of $30,163 for the period from April 1, 1997 to March 31, 2007. She also ruled that his support obligation should be $583 per month starting April 1, 2007. The ALJ found that Lundeby was

currently unemployed as a result of a long-term debilitating illness and concluded that no income should be imputed to her because she was not voluntarily underemployed or unemployed. The ALJ specifically directed that McDonough receive credit for support payments made either to Washington or Colorado.[1] The ALJ also specifically found that McDonough did not have an obligation to support Jessika after September 2005 and did not include support for her in most of its calculations. However, there were periods in which various adjustments to the customary child support obligation would have reduced McDonough's monthly payment below the $75 ordered by the trial court in 1995. For these periods, a total of 10 months, the ALJ determined that the support amount could not be reduced below the minimum amount ordered by the court. McDonough moved for reconsideration, submitting additional documents. ALJ Currie denied the motion on May 4, 2007.

McDonough petitioned the Snohomish County Superior Court for judicial review, listing nine reasons why the ALJ's determination should be adjusted: (1) Lundeby changed the 1995 support order without serving McDonough with the changes; (2) DSHS failed to adjust his child support after he notified it he had returned to work; (3) Lundeby neglected the children and falsely notified Colorado that McDonough's parental rights had been terminated; (4) California took action that affected his obligation; (5) DSHS made mistakes in calculating what he owed in back support; (6) DSHS used an incorrect figure for his current wage and improperly took into account

[1] The ALJ did not otherwise address the issue of credit for payments, and the record is not sufficient to resolve it. Although McDonough complains that he has not received proper credit, this issue is not before us.

his wife's wages for a period before they were married; (7) Lundeby failed to adequately support her claim that she could not work; (8) the child support obligation failed to account for McDonough's current family support needs; and (9) Lundeby lied to keep the children hidden.

However, in his superior court brief, McDonough did not assign error to any of the ALJ's findings and addressed only two issues. He argued that his back support obligation should have been calculated based on the $75 per month support amount provided in the dissolution decree. He also contended that his current support was incorrect because his income was overstated and because he was entitled to a deviation from the standard support obligation for his support of his stepchildren. McDonough asked the court to recalculate his back support and adjust his current support. The superior court determined that the back support was correctly calculated but remanded the case to the ALJ to consider whether a deviation should be granted for McDonough's stepchildren. Neither party appealed from this decision.

On remand, the ALJ noted that the only issue before her was whether a deviation was appropriate. McDonough unsuccessfully attempted to argue that he was wrongfully deprived of the custody of his children and therefore should owe no support. He also attempted to raise the issue of whether Lundeby was truly disabled. On December 28, 2007, the ALJ issued a final order, concluding that McDonough was entitled to a deviation from the standard support obligation. The ALJ reduced McDonough's support obligation for the period from August 1, 2006 through December

31, 2006 and reduced his current obligation beginning January 1, 2007. The ALJ also reduced the back child support obligation consistent with these recalculations. McDonough moved for reconsideration, which was denied.

McDonough again moved for superior court review, arguing that the ALJ erred by not imputing income to Lundeby, that child support should have been $50 per month for the period between August 2004 and December 2006, and that he should be relieved of his support obligation altogether for the period between January 1997 and August 2004 because he was wrongfully deprived of legal custody of his children. On June 23, 2008, the superior court denied the petition for review, finding that all of the issues McDonough raised had either been decided in the 2007 review or were not timely because they were raised for the first time in the present proceeding. McDonough appeals.

The Washington Administrative Procedure Act (WAPA)[2] governs our review. We sit in the same position as the superior court, review the record before the ALJ, and apply the standards set out in the WAPA.[3] With certain exceptions not applicable here, issues not raised before the agency may not be raised on appeal.[4] There are a number of grounds on which an administrative decision may be reversed, including when: (1) the decision is based on an error of law; (2) the decision is not based on substantial evidence; or (3) the decision is arbitrary or capricious.[5] The burden is on McDonough

[2] Chapter 34.05 RCW.
[3] Tapper v. Employment Sec. Dep't, 122 Wn.2d 397, 402, 858 P.2d 494 (1993).
[4] RCW 34.05.554; U.S. W. Commc'ns, Inc. v. Wash. Utils. & Transp. Comm'n, 134 Wn.2d 48, 72, 949 P.2d 1321 (1997).
[5] RCW 34.05.570(3).

to show the agency action is invalid.[6] We review findings of fact under a substantial evidence standard and review conclusions of law de novo.[7] We do not weigh the evidence or substitute our judgment regarding witness credibility for that of the agency.[8] We consider unchallenged findings of fact as verities on appeal.[9]

An appellant proceeding pro se must comply with all procedural rules.[10] The failure to do so may preclude review of the asserted claims.[11] In general, this court will not consider arguments that are unsupported by pertinent authority or meaningful analysis.[12] McDonough's appellate arguments are difficult to follow because he includes legal contentions in what is primarily a recitation of what he believes are the pertinent facts, many of which seem never to have been previously asserted. We have nevertheless attempted to address what appear to be his primary arguments.

McDonough's first assignment of error is that the courts erred by not defining the paragraph of the divorce decree on which this case is based. We presume McDonough is challenging the superior court's 1995 order allowing DSHS to recalculate child support when his income changed. Various statutes grant DSHS the

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[6] RCW 34.05.570(1)(a).

[7] Kabbae v. Dep't of Social & Health Servs., 144 Wn. App. 432, 445, 192 P.3d 903 (2008).

[8] Id.

[9] Id.

[10] In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993).

[11] State v. Marintorres, 93 Wn. App. 442, 452, 969 P.2d 501 (1999).

[12] RAP 10.3(a); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments not supported by authority); State v. Elliott, 114 Wn.2d 6, 15, 785 P.2d 440, cert. denied, 498 U.S. 838 (1990) (insufficient argument); Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (issues unsupported by adequate argument and authority).

power to calculate and enforce a child support obligation.[13] But McDonough does not specifically address this point or cite authority in the argument section of his brief. Moreover, McDonough could have appealed from the 1995 decision but did not, and he may not challenge it now.[14] We therefore reject this contention.

McDonough next contends the court erred in allowing retroactive enforcement of a child support modification. The provisions of a support decree may be modified only for installments accruing after the petition for modification.[15] Retroactive support modification is highly disfavored, except in certain unusual instances.[16] But because McDonough did not raise this issue in his first administrative hearing, his first review in the superior court, or his second administrative hearing, he may not pursue it now. Moreover, McDonough fails to distinguish between enforcement and modification. The original decree in this case set a child support amount which was to be adjusted when McDonough became employed. That provision has never been modified. Calculating the back support is not a modification but enforcement of the terms of the decree. Because McDonough did not pay the minimum required by the decree and because his support was not increased when he became employed and was able to pay more, he accrued a back support obligation. We recognize that Lundeby may have made things more difficult by her actions and that the involvement of different agencies may have been confusing. But these circumstances did not relieve McDonough of the obligation

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[13] In re Marriage of Aldrich, 72 Wn. App. 132, 137, 864 P.2d 388 (1993).
[14] In re Marriage of Trichak, 72 Wn. App. 21, 24, 863 P.2d 585 (1993).
[15] RCW 26.09.170.
[16] In re Marriage of Cummings, 101 Wn. App. 230, 234, 6 P.3d 19, review denied, 141 Wn.2d 1030 (2000).

to support his children. We therefore reject this claim.

McDonough next argues that the ALJ erred in not imputing income to Lundeby. He complains that Lundeby never provided proof of a condition that prevents her from working. Lundeby testified on this issue in the first administrative hearing. McDonough did not object to or offer evidence in opposition to Lundeby's testimony that she had multiple sclerosis and could not work. The ALJ found that Lundeby was unemployed as a result of a long-term illness and concluded that no income should be imputed to her. McDonough did not challenge this determination in his first petition for superior court review. After McDonough attempted to raise this issue in the second administrative hearing, the ALJ gave Lundeby a period of time in which to provide documentation establishing her disability for the record. But there is no indication that the ALJ was actually revisiting the issue, and she entered her decision without receiving any documentation from Lundeby. Because McDonough did not contest the evidentiary basis for the ALJ's findings and conclusions in the first evidentiary hearing and did not assign error to the findings or conclusions or otherwise raise the issue in his first review in the superior court, he may not now pursue this claim.

McDonough next argues that the court erred in allowing child support to be collected for Jessika for a period of time after she was emancipated. In the first review, the ALJ explained that she did not reduce McDonough's monthly support obligation below the $75 ordered by the trial court in 1995 because the support order required an undifferentiated $75 payment and she could not go below that minimum. McDonough

did not assign error to this ruling in his first or second review to the superior court, and he cites no authority for the proposition that the ALJ viewed the 1995 order incorrectly. Under the circumstances, we decline to address the issue.

McDonough finally argues that the court erred in allowing Lundeby to claim the children for tax purposes in years in which he was supposed to be able to claim them. We see nothing in the record indicating that this issue was raised in the administrative hearings. Moreover, there is nothing in the administrative decisions or the superior court decisions preventing McDonough from claiming the exemptions for any year in which he is lawfully entitled to claim them. As McDonough has not shown error, we reject this claim.

McDonough has either failed to preserve his issues or failed to carry his burden of showing that the agency's action was not valid. We affirm.

Ajid, J.

WE CONCUR:

Appelwick, J.

Grosse, J.